



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF FINANCIAL AND INSURANCE SERVICES  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
DAVID C. HOLLISTER, DIRECTOR

LINDA A. WATTERS  
COMMISSIONER

## BILL ANALYSIS

**BILL NUMBER:** House Bill 5328(H-2), and Companion Bills 5329 and 5324  
**TOPIC:** Regulation of the business of money transmission  
**SPONSOR:** Representatives Hunter, Palsrok and Huizenga  
**CO-SPONSORS:** Representatives Lemmons III, McConico and Tobocman  
**COMMITTEE:** House Banking and Financial Services  
**Analysis Done:** March 2, 2006

### POSITION

The Office of Financial and Insurance Services supports this legislation, which was introduced at our request.

### PROBLEM/BACKGROUND

Currently, entities involved in the business of electronic or wire transmission of money are unregulated in Michigan. The paper transmission of money is regulated under the Sale of Checks Act, 1969 PA 136, MCL 487.901 to 487.916 (SOCA). Broadly, money transmission is defined as the selling or issuing of payment instruments or the receiving of a certain amount of money for transmission for a fee, commission, or other consideration.

Existing law in Michigan leaves us vulnerable to those supporting terrorists and terrorism. Failure to enact this legislation leaves Michigan open to criticism for not actively reducing a viable means of financing terrorism. This legislation would fill the gap in the existing law by completing the regulatory circle envisioned with the passage of the USA Patriot Act, Public Law No. 107-56 (18 USC Sec. 1960). The USA Patriot Act provides that violation of a state money transmitter law is a violation of the federal act and would subject the person to additional prosecution in federal court.

Money laundering is the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises the income to make it appear legitimate (*Source: The President's Commission on Organized Crime*). Money laundering typically involves three steps that can occur simultaneously: first, placement of unlawful cash into traditional financial institutions via deposits or other means; second, the separation of the cash from the criminal activity by using several intermediate complex financial transactions, such as converting cash into traveler's checks, money orders, letters of

credit, stocks, bonds, purchasing valuable art objects, or wire transfers; and finally the integration of those funds back to the criminals by using an apparently legitimate transaction that disguise the source of the illicit proceeds, such as sham loans or false import/export invoices.

### **DESCRIPTION OF BILL**

House Bill 5328 creates a new act to provide for a regulatory framework for both the paper and electronic transmission of money. The existing SOCA provides for the licensing and regulation of entities involved in the paper transmission of money. This bill would modernize Michigan's law to recognize the realities of the market for money transmission by also regulating electronic and wire transmission.

This bill would provide a regulatory framework for dealing with money laundering issues that are more prevalent among nondepository providers of financial services and would facilitate and enhance enforcement of money laundering laws. This bill is based in part on the Uniform Money Services Act drafted by the National Conference on Commissioners on the Uniform State Laws, approved in August 2000. The American Bar Association has approved the Uniform Money Services Act that has been adopted in Iowa, Vermont, Washington, Texas and the U.S. Virgin Islands.

This bill would repeal the outdated SOCA and replace that act with a modernized money transmitter act. The SOCA does not cover electronic or wire transfer activity since it was enacted 45 years ago and did not contemplate the type of transactions that commonly occur in today's money transmission market.

The proposed regulatory program includes application and licensure provisions and subjects licensees to examination, cease and desist orders, consent orders, suspension or revocation of licenses, and civil penalties. The Administrative Procedures Act would apply to administrative actions taken by the Commissioner.

Two companion bills are also required to fully implement the provisions of this bill. House Bill 5329 would amend the Code of Criminal Procedure to include sentencing guidelines for a violation of the new money transmitter law. House Bill 5324 would amend the Consumer Financial Services Act (CFSA) to include a reference to the money transmitter law in the definition of financial licensing act, as well as revise the provisions regarding net worth and proof of financial responsibility in contemplation of the new business activity under the CFSA umbrella license.

### **SUMMARY OF ARGUMENTS**

#### **Pro**

Since the market for financial services has become increasingly diverse, complex, and competitive, consumers now face an ever-expanding array of businesses and industries offering money and electronic transfers. Many of the entities offering these services

have not been subject to the same level of regulatory or administrative oversight as state and federal depository financial institutions. This bill would place money transmitters within a single legal framework providing for a strong uniform law addressing safety and soundness of the entities offering these financial services to customers who often are "unbanked" (consumers who do not maintain a formal ongoing relationship with a depository financial institution).

This bill would create a strong licensing mechanism to deter businesses engaging in money laundering and illegal activity from conducting business in this state. It would also strengthen enforcement and supervisory powers to permit OFIS and local, state and federal law enforcement agencies to take appropriate action if money laundering and other related violations of law were suspected.

For entities that engage in money transmission lawfully, this bill would provide them a cost-effective means of complying with the law and a clear framework within which to operate.

The bill provides for strong criminal and civil penalties for violating the act. For example, the bill provides that a person without a license that knowingly engages in an activity for which a license is required is guilty of a felony punishable by imprisonment for not more than 5 years or a fine not to exceed \$100,000.00, or both.

In addition, the bill provides the Commissioner with a wide range of enforcement tools, i.e., cease and desist orders, denial of a license application or revocation of a license for cause, taking action if the licensee engages in an unsafe or unsound practice, summary suspensions, assessment of civil fines against persons that violate the act, and prohibition orders if, in the opinion of the Commissioner, a person has engaged in fraud or has been convicted of a criminal violation involving money laundering.

## **Con**

OFIS has not identified any arguments against enacting this legislation nor are we aware of anyone who opposes this legislation.

## **FISCAL/ECONOMIC IMPACT**

OFIS has identified the following revenue or budgetary implications in the bill as follows:

### **(a) To the Office of Financial and Insurance Services:**

**Budgetary:** The enactment of this bill would require creation within OFIS of a new regulatory program of licensing, examination, and enforcement. This would require the appropriation of funds and FTEs to accomplish this goal. In addition to staffing costs, there would likely be about \$100,000 additional operating

expenses annually (examiner per diem and travel, application forms, postage costs, etc.).

In the past, prior to the inclusion of nondepository money-services businesses into OFIS' integrated database and prior to the establishment of DIT, there were significant costs associated with programming a new license type – at one time estimated between \$80,000 - \$100,000. Because the system changes are now far less, those costs have decreased dramatically. Although we do not have a firm figure on the amount, we estimate no more than \$40,000 to \$80,000. OFIS projects the following costs:

Staffing:	\$128,790 - \$210,834 plus benefits
Operating costs:	\$100,000
Information Technology:	\$40,000 - \$80,000
<b>Total Costs:</b>	<b>\$268,790 - \$390,834 plus benefits</b>

Revenue: As with all other entities regulated by OFIS, the bill provides for the funding by regulated entities through annual assessments of the costs associated with running the program. OFIS currently has no reliable estimate of the number of money transmitter, payment instruments sellers, and certain types of Internet payment services that might be subject to licensure, so it is not yet possible to estimate the size of the regulatory fee that we would recommend to fund the program. It is likely that large amounts of money pass through these channels, so we would probably recommend a regulatory fee that is a fractional percentage of funds transmitted.

Comments: OFIS has estimated the projected staffing needs and monitoring costs associated with repealing the Sale of Checks Act and replacing it with a Michigan Money Transmitters Act. The cost projections are as follows:

**Create a New Division within OFIS:**

**A Licensing Section** – 1.0 FTE – Department Technician 7/8/9 (\$30,973 - \$42,548 plus benefits)

**A Market Conduct and Investigation Section** – 3.0 FTEs – Financial Institutions Examiner 9/10/11 (\$32,606 - \$56,095 each, plus benefits)

(b) To the Department of Labor and Economic Growth: None known.

(c) To the State of Michigan: None known.

(d) To Local Governments within this State: None known.

#### **OTHER STATE DEPARTMENTS**

The Department of State Police has reviewed the legislation and supports the removal of a provision that would require a duplicate filing of suspicious activity reports with their Department.

The Department of Veterans and Military Affairs supports the enactment of this legislation.

The Department of Corrections is neutral on House Bill 5329 that provides sentencing guidelines. The package creates new crimes and there is no data available to determine its impact on their Department.

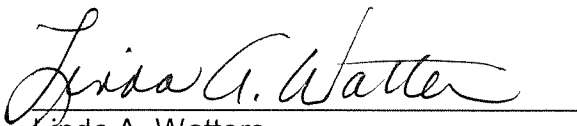
#### **ANY OTHER PERTINENT INFORMATION**

The American Bar Association has approved the Uniform Money Service Act that has been adopted in Iowa, Vermont, Washington, Texas and the U.S. Virgin Islands.

The Non-Bank Funds Transmitters Group supports the enactment of modern safety and soundness legislation applicable to money transmission activities. This Group, along with several other industry representatives, was involved in the drafting of this substitute version of House Bill 5328.

#### **ADMINISTRATIVE RULES IMPACT**

Rules can be promulgated to provide for administration of the act.



Linda A. Watters  
Commissioner

3-2-06

Date

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Partner

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February 7, 2006

**FEDERAL EXPRESS**

The Honorable Krystal Kay Rourke  
Deputy Commissioner, Policy Division  
Office of Financial and Insurance Services  
State of Michigan  
611 W. Ottawa Street, 3rd Floor  
Lansing, MI 48933

Re: H1 Substitute for House Bill 5328 -- Money Transmitter  
Licensing

Dear Commissioner Rourke:

I am writing in my capacity as counsel to the Non-Bank Funds Transmitters Group ("Group"), which is composed of: Western Union Financial Services, Inc., MoneyGram International, Travelex Americas, American Express Travel Related Services, RIA Financial Services, Comdata Network, Inc. and Sigue Corporation. The Group is composed of the leading national money transmitters and issuers of payment instruments.

The Group has been active, over the years, in supporting the enactment of modern safety and soundness legislation applicable to money transmission activities. Last year, the Group submitted comments to the Office of Financial and Insurance Services in support of a similar bill, Senate Bill 176. We have reviewed the H1 substitute for House Bill 5328 and are in support of this bill.

The Honorable Krystal Kay Rourke  
February 7, 2006  
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In short, the Group believes that the H1 substitute for House Bill 5328 is in the public interest and should be adopted.

Should you have any questions, please contact me at your convenience.

Sincerely,

Ezra C. Levine

A large, stylized handwritten signature in black ink, appearing to read 'Ezra C. Levine', is written over the typed name and extends upwards and to the right.